

IN THE SUPREME COURT  
OF THE STATE OF OREGON

**In re:**

### Complaint as to the Conduct of

**CRAIG WYMETALEK,**

**Accused.**

**Case No. 14-13**

## DIVERSION AGREEMENT

The Oregon State Bar (hereinafter, “the Bar”) and Craig Wymetalek, Bar No. 964641, (hereinafter, “the Accused”) enter into the following diversion agreement pursuant to Bar Rule (BR) 2.10.

1.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1996, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Washington County, Oregon.

2.

On February 14, 2014, the State Professional Responsibility Board (hereinafter, “the SPRB”) authorized formal proceedings against the Accused alleging that he violated RPC 1.15-1(c).

3.

The SPRB has determined that this matter is appropriate for diversion under the provisions of BR 2.10 in that:

(a) the allegation of misconduct against the Accused does not involve misappropriation of funds or property; fraud, dishonesty, deceit, or misrepresentation; or the commission of a misdemeanor involving moral turpitude or a felony under Oregon law.

PAGE 1 –CRAIG WYMETALEK – DIVERSION AGREEMENT

1 (b) the misconduct by the Accused appears to be the result of inadequate law office  
2 management.

3 (c) there appears to be a reasonable likelihood that the successful completion of a  
4 remedial program will prevent the recurrence of conduct by the Accused similar to  
5 that under consideration for diversion.

6 4.

7 The Accused agrees to enter into diversion freely and voluntarily, and with the  
8 opportunity to consult with counsel. He acknowledges that he has the right to a full and  
9 complete evidentiary hearing concerning the authorized allegations at which the Bar would  
10 have the burden of proving the allegations by clear and convincing evidence. The Accused  
11 further acknowledges that he is entering into this agreement in lieu of exercising his right to an  
12 evidentiary hearing.

13 **STIPULATED FACTS**

14 5.

15 In the event that the Accused fails to comply with the terms of this agreement, he  
16 agrees that the following facts shall be deemed true in any subsequent disciplinary proceeding:

17 (a) In the years 2012 and 2013, the Accused accepted credit card payments of earned  
18 fees. In order to do so, the Accused contracted with a merchant services company to  
19 handle the credit card transactions. Credit card payments were made by the merchant  
20 services company to the Accused's lawyer trust account. For each transaction, the  
21 merchant services company would charge the Accused's trust account a fee that varied  
22 with the size of the deposit.

23 (b) The Accused relied on notices from his merchant services company as to when funds  
24 had been deposited into his lawyer trust account. When so notified, the Accused  
25 would withdraw earned fees from the account. At times, the merchant services

1 company would withdraw its fees after the Accused had withdrawn earned fees from  
2 the trust account, resulting in overdrafts to the account that did not affect client funds.

3 (c) On September 12, 2013, the Accused received notice from his merchant services  
4 provider that two payments of \$1,500 and \$2,500, respectively, had been deposited  
5 into his lawyer trust account. On that day, the Accused wrote a trust account check in  
6 the amount of \$1,575 for earned fees, and the check was paid by his bank. The  
7 Accused also withdrew \$1,400 on September 12, 2013, and the merchant services  
8 company withdrew its transaction charge of \$25.35.

9 (d) These September 12 transactions caused an overdraft in the amount of \$1,575 in the  
10 Accused's lawyer trust account because the merchant services company did not  
11 deposit the \$2,500 into the Accused's lawyer trust account until September 13, 2013.

12 (e) The Accused's lawyer trust account was also overdrawn by \$110.51 as of August 31,  
13 2013. The overdraft was caused by the deposit of an NSF check from the Accused's  
14 office account to reimburse his trust account for merchant services fees. The Accused's  
15 office account was NSF because of a bank hold on a check that had previously been  
16 deposited into the Accused's office account.

#### 17 TERM OF THIS AGREEMENT

##### 18 6.

19 The term of this agreement shall be for twelve (12) months, and shall terminate at  
20 12:01 a.m. on May 30, 2015 or until the Accused has satisfied all of the requirements of this  
21 agreement, whichever is later.

#### 22 REMEDIAL PROGRAM

##### 23 7.

24 During the term of this agreement, the Accused shall engage in the following remedial  
25 program:

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- (a) Any costs associated with the remedial program shall be borne by the Accused.
- (b) No later than December 31, 2014, the Accused shall attend and successfully complete the Ethics School requirement set forth in BR 6.4. The Accused acknowledges that a failure to complete this requirement timely may be grounds for the extension or termination of this agreement by the SPRB. This requirement is in addition to any other provision of this agreement that requires the Accused to attend or obtain continuing legal education (CLE) credit hours.
- (c) The Accused will communicate with Disciplinary Counsel's Office and allow Disciplinary Counsel's Office access to information, as Disciplinary Counsel's Office deems necessary to monitor compliance with this agreement.
- (d) The Accused is responsible for the timely submission of all reports required by this agreement, including the reports required from third persons.

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- (e) On or before June 30, 2014, the Accused shall meet with office management consultants from the PLF for an evaluation of his/her trust accounting procedures and office management practices. When the Accused receives recommendations from the PLF regarding his accounting and office management practices. The Accused shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review by the PLF on or before the expiration date of this agreement.
- (f) Every month for the term of this agreement, the Accused shall: (1) maintain complete records, including individual client ledger cards, of the receipt and disbursement of client funds and payments on outstanding bills; and (2) review his monthly trust

1 account records and client ledger cards and reconcile those records with his monthly  
2 lawyer trust account bank statements.

3 (g) For the term of this agreement, the Accused will employ a bookkeeper, approved by  
4 Disciplinary Counsel's Office, to assist in the monthly reconciliation of his lawyer trust  
5 account records and client ledger cards.

6 (h) On or before May 1, 2015, the Accused shall arrange for an accountant to conduct  
7 agreed-upon procedures to determine whether the Accused's trust account has been  
8 in balance and whether the Accused has maintained adequate records of trust account  
9 transactions and to prepare a report of the agreed-upon procedures for submission to  
10 Disciplinary Counsel's Office on or before May 30, 2015.

11 **Quarterly Reporting Requirements**

12 (i) On or before the first day of June 2014, and on or before the first day of each third  
13 month thereafter, the Accused shall submit to Disciplinary Counsel's Office a written  
14 report verifying that:

15 (1) The Accused has reviewed his lawyer trust account records and reconciled them  
16 monthly with his lawyer trust account bank statements and individual client  
17 ledger cards, that the Accused has maintained records sufficient to substantiate  
18 each lawyer trust account transaction, and that he is in compliance with the Rules  
19 of Professional Conduct regarding lawyer trust account practices or advise  
20 Disciplinary Counsel's Office why he has not done so.

21 (2) The Accused has implemented the PLF's recommended changes to his office  
22 management and financial practices or advise Disciplinary Counsel's office why  
23 the changes have not been implemented.

24 (3) That any merchant services fees charged against his trust account have been  
25 reimbursed within ten (10) days of the charges.

(4) The Accused is otherwise in compliance with the terms of this agreement relating to his office and financial management practices.

(5) In the Accused's first quarterly report to Disciplinary Counsel's Office, he shall notify the Bar of the PLF's recommended changes in his office and financial management practices.

(6) If the Accused has not complied with any term of this agreement, he shall notify Disciplinary Counsel's Office of the reasons for non-compliance in the quarterly report next due following the non-compliance.

(7) On or before the first day of June 2014, and on or before the first day of each third month thereafter for the term of this agreement, the Accused shall cause the bookkeeper described in paragraph 7(g) above to submit a written statement to Disciplinary Counsel's Office that verifies that the Accused has not had any negative activity in his lawyer trust account, such as overdrafts, that all merchant services charges have been timely reimbursed to the account, and that the Accused's records of client funds and lawyer trust account transactions are otherwise in good order.

(j) If the Accused has not complied with any term of this agreement, he shall notify Disciplinary Counsel's Office of the reasons for non-compliance in the quarterly report next due following the non-compliance.

#### **Final Reporting Requirements**

(k) On or before May 30, 2015, the Accused shall cause his accountant described in paragraph 7(h) above, to report to Disciplinary Counsel's Office the results of the final review of the Accused's lawyer trust account.

1 **COMPLIANCE AND DISPOSITION**

2 8.

3 Any failure by the Accused to comply with any term of this agreement, any failure by the  
4 Accused to comply with any reasonable request by Disciplinary Counsel's Office, or any  
5 subsequent finding by the SPRB that there is probable cause that the Accused violated a  
6 provision of the Oregon Rules of Professional Conduct or ORS Chapter 9 in a matter unrelated  
7 to the subject of this diversion, is a basis for the extension or termination of this agreement by  
8 the SPRB. In the event Disciplinary Counsel has reason to believe that there is such a basis to  
9 extend or terminate this agreement, the Accused acknowledges that Disciplinary Counsel will  
10 make a report to the SPRB and that the SPRB, after giving the Accused an opportunity to be  
11 heard through submission provided for by BR 2.10(e)(1), may extend the agreement, with the  
12 Accused's consent, or terminate the agreement and take further action pursuant to BR 2.6,  
13 including the filing of a Formal Complaint.

14 9.

15 If the Accused complies with all the terms of this agreement through the duration of the  
16 agreement, the matter shall thereafter be dismissed and shall not be considered a prior  
17 disciplinary offense in any subsequent disciplinary proceeding against him.

18 **WAIVERS**

19 10.

20 (a) The Accused hereby waives any privilege or right of confidentiality in order to permit  
21 the disclosure of any privileged information concerning compliance or non-compliance  
22 with this agreement. The Accused agrees to sign any releases necessary to effectuate  
23 the provisions of his remedial program.

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1 STATUS OF FORMAL PROCEEDING

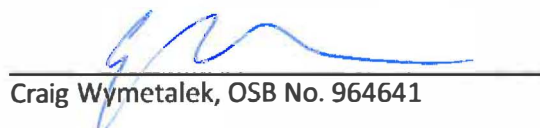
2 11.

3 The parties acknowledge and agree that the authorized formal disciplinary proceeding  
4 shall be held in abeyance so long as this diversion agreement is in place. The Accused waives  
5 any claim that the Bar has failed to prosecute the proceeding timely for the period during which  
6 the proceeding is held in abeyance.

7 12.

8 The Accused acknowledges that this diversion agreement, the Accused's compliance  
9 with the agreement, and the disposition of this proceeding upon completion or termination of  
10 the agreement, are matters of public record.

11 EXECUTED this 25 day of April, 2014.

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14 Craig Wymetalek, OSB No. 964641

15 This agreement was approved by the SPRB and is effective on May 30, 2014

16  
17 EXECUTED this 20<sup>th</sup> day of May, 2014.

18 OREGON STATE BAR

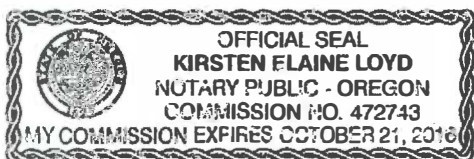
19  
20 By:   
21 Martha M. Hicks, OSB No. 751674  
22 Assistant Disciplinary Counsel  
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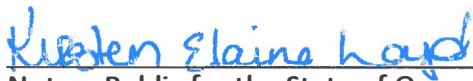


1 I, Craig Wymetalek, being first duly sworn, say that I am the Accused in the above-  
2 entitled proceeding and that I attest that the statements contained in the diversion agreement  
3 are true and correct as I verily believe.

4   
Craig Wymetalek

5 SUBSCRIBED AND SWORN to before me this 25 day of April, 2014.

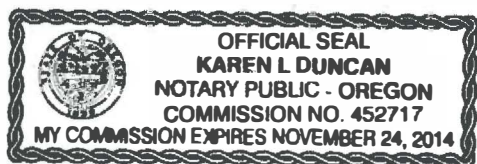


  
Notary Public for the State of Oregon  
My commission expires: 10/21/16

10 I, Martha M. Hicks, being first duly sworn, say that I am Assistant Disciplinary Counsel  
11 for the Oregon State Bar and that I attest that the SPRB approved the diversion in this  
12 proceeding on February 14, 2014.

13 By:   
14 Martha M. Hicks  
15 Assistant Disciplinary Counsel

16 SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of May, 2014.



  
Notary Public for the State of Oregon  
My commission expires: Nov. 24, 2014